UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1056/Add.1
11 April 1991

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 1056th MEETING

Held at Headquarters, New York,
on Monday, 8 April 1991, at 4.40 p.m.

Chairman: Mr. POCAR

CONTENTS

ORGANIZATIONAL AND OTHER MATTERS (continued)

* The summary record of the first part (closed) of the meeting appears as document CCPR/C/SR.1056.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The public meeting was called to order at 4.40 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

Draft general comment on article 7 of the Covenant (CCPR/C/40/CRP.1/Rev.1)

1. Ms. CHANET, speaking as Chairman/Rapporteur of the Working Group on Article 40 of the Covenant, introduced the draft general comment on article 7, which had been prepared by the Working Group, and pointed out that the comment had been drafted in French and that the English version contained a number of mistranslations.

2. Paragraph 1 of the draft reproduced most of the text of article 7. Paragraph 2 stated that the aim of that provision was to protect the integrity and dignity of every individual, and that it was the duty of the State party to afford everyone protection under the law against the maltreatment prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or even in a private capacity. The prohibition in article 7 was supported by the positive requirement of article 10 (1) of the Covenant, which stipulated that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

3. In paragraph 3, the Committee recalled that, even in situations of public emergency, such as those referred to in article 4 (1), article 4 (2) did not allow any derogation from that provision. In the Committee's view, no justification might be pleaded on the basis of an order from a superior officer or a public authority.

4. Paragraph 4 stated that, unlike the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Covenant did not contain any definition of the acts prohibited. The Committee did not consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depended on the nature, purpose and severity of the treatment applied.

5. Paragraph 5 pointed out that the prohibition in article 7 of the Covenant related to acts which caused not only physical pain but also mental suffering to the victim. It went on to state that, in its consideration of communication No. 107/1981, Quinteros v. Uruguay, the Committee had decided that the anguish felt by a mother at the disappearance of her daughter constituted a violation of article 7. The draft stated that, in the Committee's view, the prohibition should extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure, and that it was appropriate to emphasize that article 7 protected pupils and patients in teaching and medical institutions. Finally, it stated that, when the death penalty was applied in

(Ms. Chanet)

a State party, it must be carried out in such a way as to cause the least possible physical and mental suffering.

6. Paragraph 6 underscored the fact that article 7 of the Covenant expressly prohibited medical or scientific experimentation without the free consent of the person concerned. In the draft, the Committee noted that the reports of States parties generally contained little information on that point and that more attention should be given to the need to ensure observance of that provision. Further, the Committee noted that, in the light of principle 22 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment a detained person must be regarded as having been deprived of his freedom to consent to such experimentation by virtue of his very detention.

7. Paragraph 7 affirmed that every State party must indicate in its reports what attitude it took towards States where there was a pattern of serious, flagrant or massive human rights violations, and state whether it took account of that situation in entertaining applications for extradition from such States or considering whether to expel or return (refouler) a person to such a State.

8. Paragraph 8 pointed out that States parties must also inform the Committee of the legislative, administrative, judicial and other measures they took to prevent acts of torture and cruel, inhuman and degrading treatment in any territory under their jurisdiction.

9. In paragraph 9, the Committee noted in particular that it was useful to receive information on the education and training of law enforcement personnel, medical personnel, public officials and other persons who might be involved in the custody, interrogation or treatment of any individuals subjected to any form of arrest, detention or imprisonment.

10. Paragraph 10 pointed out that, in addition to describing steps to provide general protection against acts prohibited under article 7 to which anyone was entitled, the State party should detail measures enabling a special watch to be kept over people particularly at risk. Further, it should be noted that keeping interrogation rules, instructions, methods and practices and arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment under systematic review was an effective means of preventing cases of torture and ill-treatment.

11. Paragraph 11 stated that provisions requiring detainees to be held in places officially recognized as such, and requiring their names and places of detention to be kept in a register available to those concerned, such as relatives, helped to guarantee the effective exercise of such control. Further, prohibiting detention incommunicado, giving access to doctors and lawyers and, without prejudice to the investigation, to family members, would also ensure increased protection for individuals.

(Ms. Chanet)

12. Paragraph 12 stated that, in the Committee's opinion, any statement obtained through torture or other treatment prohibited by article 7 could not be used as evidence in proceedings and must be declared inadmissible in court.

13. In paragraph 13, the Committee emphasized that, in order to implement article 7 of the Covenant, it was not sufficient to prohibit such punishment or treatment or to make them a crime. Moreover, while most States had laws against torture and similar practices, such acts nevertheless occurred, and it was for that reason that States parties were required to afford effective protection by establishing some supervisory mechanism.

14. Paragraph 14 stated that the right to lodge complaints against maltreatment prohibited by article 7 must be recognized, and that complaints must be impartially investigated by the competent authorities and, where necessary, by independent authorities. Further, the reports of States parties should provide specific information on the remedies available, the procedures which complaints should follow and statistics on the number of complaints and how they were dealt with.

15. Paragraph 15 stated that those found guilty of acts prohibited by article 7 must be held responsible, and victims must be entitled to compensation. The second sentence of the paragraph, which was enclosed in brackets, read: "[Criminal amnesty for persons guilty of such offences should not affect the civil right to compensation.]". Finally, it was pointed out that States parties must indicate in their reports what laws applied in that regard in their territory and how, specifically, they were applied.

Draft general comment on article 10 of the Covenant (CCPR/C/41/CRP.1)

16. Ms. CHANET, speaking as Chairman/Rapporteur of the Working Group on Article 40 of the Covenant, introduced the draft general comment on article 10, which had been prepared by the Working Group.

17. Paragraph 1 cited article 10 (1) of the Covenant. Paragraph 2 pointed out that that provision imposed on States parties an express obligation towards persons who were particularly vulnerable because of their status as persons deprived of liberty, and supplemented the ban on torture or other cruel, inhuman and degrading treatment or punishment contained in article 7 of the Covenant. Paragraph 3 pointed out that not only might detained persons not be subjected to treatment which was contrary to article 7, but neither might they be subjected to any suffering or constraint other than what was inherent in the deprivation of liberty, and that respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Moreover, prisoners enjoyed all the rights set forth in the Covenant, subject to the restrictions which were strictly necessary for organizing life in a closed environment.

18. Paragraph 4 stated, that, like article 9 (1), that provision applied to anyone deprived of liberty, namely, to persons who were lawfully held against

(Ms. Chanet)

their will, whether in prisons, hospitals, detention camps or correctional institutions or elsewhere. According to paragraph 5, the ultimate responsibility for observance of the principle stipulated in article 10 (1) lay with the State as regarded all institutions and establishments on its territory where persons were lawfully being held against their will. In paragraph 6, the Committee expressed its wish that States parties indicate in their reports whether they were complying with United Nations standards applicable to the treatment of prisoners, namely, the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Code of Conduct for Law Enforcement Officials, and the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment.

19. In paragraph 7, the Committee recalled that the reports must provide detailed information on national legislative and administrative provisions which had a bearing on the right provided for in article 10 (1), noting that it also felt that it was necessary for the reports to specify what concrete measures had been taken by the competent authorities to monitor the effective application of the rules for the treatment of detained persons.

20. Paragraph 8 stated that it was desirable that the reports should mention whether the various applicable provisions were being brought to the attention of the personnel who had authority over detained persons, and whether the latter had access to such information and had effective remedies enabling them to ensure that those rules were respected, and to complain if they were violated.

21. Paragraph 9 stated that it was a fundamental, universally applicable rule that all persons deprived of their liberty must be treated with humanity and with respect for their dignity and it followed that that rule could not depend exclusively on the material resources available in the State party. While it was conceivable that conditions of detention might vary according to available resources, they should always be designed and applied without discrimination, as required by articles 2 and 26 of the Covenant.

22. In paragraph 10, the Committee recalled that the principle set forth in article 10 (1) constituted the basis for the stricter and more specific obligations of States in respect of criminal justice, which were set forth in article 10 (2) and (3); the purpose of those provisions was to ensure the protection of the groups in question and the obligations outlined therein must be viewed in that light.

23. In paragraph 11, the Committee, referring to article 10 (2) (a), noted that accused persons benefited from the presumption of innocence laid down in article 14 (2) of the Covenant. Consequently, the reports of States parties must indicate how the separation of accused persons from convicted persons was

(Ms. Chanet)

effected and explain how the treatment of accused persons differed from that of convicted persons.

24. Paragraph 12 indicated that article 10 (2) (b) provided, inter alia, that "accused juvenile persons shall be separated from adults". The information given in the reports indicated that some States parties were not giving all the necessary attention to the fact that that was a mandatory provision of the Covenant and that failure to comply with it could not be justified by any consideration whatsoever.

25. Paragraph 13 stated that article 10 (2) (b) further required that cases involving juveniles be examined "as speedily as possible"; accordingly, reports should specify the measures taken by States parties to give effect to that provision.

26. In paragraph 14, the Committee, referring to article 10 (3), expressed its wish to have detailed information on the penitentiary system of the State party, and stressed that the system should aim at treating the offender in such a way as to ensure that, after his release, he would wish and be able to live his life respecting the law and providing for his needs.

27. Paragraph 15 stated that, in a number of cases, the information furnished by the State party contained no specific reference either to legislative or administrative provisions or to practical measures to ensure the re-education of convicted persons, and that the Committee wished to have specific information concerning the measures taken to provide teaching, education, vocational guidance and training and also concerning work programmes for prisoners inside the penitentiary establishment as well as outside.

28. Paragraph 15 stated that, in order to determine whether the principle set forth in article 10 (3) was being fully respected, the Committee also wished to know about the specific measures applied during detention, for example, how convicted persons were treated as individuals and classified, the disciplinary system, solitary confinement and high-security detention, and the conditions under which contacts were ensured with the outside world (family, lawyer, social services). States parties were invited to specify whether they had a system to provide assistance after release.

29. In paragraph 17, the Committee noted that article 10 (3) of the Covenant implied that no penitentiary system might have as its purpose the permanent elimination of the convicted person or the enforcement of his penalty to the complete exclusion of any effort to seek his reformation or social rehabilitation.

30. Finally, paragraph 18 indicated that gaps had been observed by the Committee in the reports of some States parties as concerned the treatment accorded to juvenile offenders. Under article 10 (3), the latter must be segregated from adults and be accorded treatment appropriate to their age and legal status, with the aim of furthering their reformation and social

(Ms. Chanet)

rehabilitation. In that regard, the State party must specify whether it was applying the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as the Beijing Rules.

31. The Working Group proposed that the aforementioned general comments should replace the existing comments on articles 7 and 10 of the Covenant.

32. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to take up the general comments separately and that it wished to begin with the general comment on article 7 of the Covenant.

33. It was so decided.

34. Mr. SADI said that the problem of combating torture had a cultural dimension; that dimension should be addressed. The first sentence of paragraph 2 of the general comment ("the aim of this provision is to protect the integrity and dignity of every individual") was correct but did not go far enough. It should also refer to societies, civilizations and nations in order to ensure that they, too, were protected and their integrity preserved. The Committee should maintain a link between the individual and society and endeavour to consider both dimensions at the same time.

35. Referring to paragraph 3 of the general comment, he said that some protection should be afforded to the person who disobeyed an unlawful order to perpetrate torture on a prisoner or detainee. In paragraph 4, the Committee seemed to imply that it was not committed to the definition of torture as contained in the Convention againt Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Since the Convention was the most articulate instrument on torture, the Committee should confine itself to the definition of torture as contained in that Convention.

36. The first sentence of paragraph 5 referred to acts which caused physical pain or mental suffering to the victim. Perhaps the Committee should also consider including a reference to emotional and spiritual suffering.

37. Referring to paragraph 9, he suggested that entire societies needed to be trained to view torture as abhorrent. Such education and training should not be confined to people involved in law enforcement activities but should be directed at the society as a whole, starting perhaps as early as the elementary school level.

38. Mrs. HIGGINS, responding to a comment by Mr. Lallah, said that the phrase "integrity of the person" had a well-known legal meaning; the word "integrity" in the first sentence of paragraph 2 should therefore be kept. The second sentence of paragraph 3 seemed out of place and the Committee should consider moving it elsewhere. If it remained where it was, the Committee should add a lead-in sentence to indicate that the subject dealt with limitations on exceptions; such a sentence might read: "This is an extremely important right, there are no limitations in the right itself, no justification can be

(Mrs. Higgins)

pleaded on the basis of an order and, moreover, there can be no derogation from it in times of national emergency".

39. She preferred to leave the wording of paragraph 4 as it stood. The paragraph simply indicated that the Committee did not have a definition of torture.

40. The first sentence of paragraph 5 in the English version should be amended to read "The prohibition in article 7 of the Covenant relates to acts which cause not only physical pain but also to acts which cause mental suffering", otherwise it was misleading. Since anguish and emotions were not violations, the second half of the next sentence should be amended to read "the Committee decided that the anguish caused to a mother by the disappearance of her daughter constituted a violation of article 7". The third sentence of paragraph 5 implied that the Committee viewed all corporal punishment as a violation of article 7; she questioned whether such an opinion should be included in a general comment. She pointed out that the word "excessive" appeared only in the English version of the comment and suggested that the Committee might like to have a substantive debate on whether it felt comfortable with the idea that all corporal punishment was not only undesirable but actually a violation of article 7. Finally, she suggested that the words "in all circumstances" should be added at the end of the last sentence of paragraph 5.

41. She raised the question of principle whether the Committee should refer to other United Nations instruments. Normally, reference to any instrument which was not a legal instrument should be avoided. Perhaps the members of the Committee might wish to discuss that principle.

42. Referring to the first lines of paragraphs 7 and 8, she suggested that the word "must" should be replaced by "should", which was the usual way in which the Committee addressed States.

43. Mr. DIMITRIJEVIĆ said that, there was a tendency, when drafting a general comment, to write a professorial commentary on a given article. Such commentaries were not based on the Covenant and might not be appreciated by States parties. General comments should relate specifically to the Committee's experience in its consideration of reports.

44. It was not wise to refer to any definition of torture contained in any other instrument. The Committee should not impose on States parties definitions of torture which might prove to be different in practice from the Committee's interpretation of the Covenant. If the Committee took into account that "prohibited acts" also included degrading treatment or punishment, it should include references to those kinds of acts in appropriate places in the general comments.

45. In paragraph 5, the Committee should consider mentioning not only mental suffering but also humiliation of the victim. If it did so, he would be able

(Mr. Dimitrijevic)

to accept the view that any corporal punishment was degrading, although it did not cause excessive physical or mental pain. Referring to the second sentence of paragraph 5, he stressed that the Committee should refrain from quoting its own jurisprudence in its general comments.

46. He agreed with Mrs. Higgins that the general comment contained too many "musts"; they should be replaced by more polite language. While he fully agreed with the content of paragraph 7, he could find no basis for it in the Covenant. The Covenant did not cover extradition unless expulsion was a disguised form of extradition. Paragraph 7 should be limited to situations in which the country was aware - or in which there was evidence - that torture was being practised.

47. Referring to paragraph 9, he agreed with Mr. Sadi that efforts should be made in the schools to combat a society's acceptance of cruelty as appropriate behaviour.

48. Mr. WENNERGREN said that the first sentence of paragraph 2 could usefully be amended to read "The aim of this provision is to protect the well-being of the individual, with particular regard to his integrity and dignity." The new wording would thus cover forms of ill-treatment other than torture, taking into account the fact that States often claimed that torture was not practised in their territory. He proposed that the word "even" be deleted in the second sentence, which should be followed by a further sentence reading "Even if the article covers all situations of life, it is evident that it is of particular importance with regard to detained or otherwise dependent persons who are in very exposed situations." The rest of the paragraph would remain unchanged.

49. He suggested the addition of a sentence to follow the first sentence in paragraph 6, namely "It also protects his physical and mental integrity." The wording should take account of experiments which, without directly harming the body, could be considered as violating the integrity of the person.

50. Paragraph 12 should recall the wording of article 14 (3) (g), which affirmed the general principle that no one should be compelled to testify against himself or to confess guilt, but he considered it inadvisable in paragraph 12 to refer expressly to the inadmissibility in court of evidence obtained through torture.

51. Mr. MAVROMMATIS said that he had yet to be convinced of the usefulness of the general comments, which often seemed to focus on issues of less than crucial importance.

52. Turning to the draft text under consideration, he suggested that the words "may be pleaded" in paragraph 3 should be deleted on the grounds that they were unduly restrictive in scope. It would be better if the sentence read "In the Committee's view, moreover, orders from a superior officer or a public authority cannot amount to a justification."

(Mr. Mavrommatis)

53. In paragraph 5 the words "excessive chastisement" should be deleted since that wording seemed to imply that chastisement which was not excessive was permissible.

54. Paragraph 10 should specify what measures should be taken to protect people particularly at risk in respect of acts prohibited under article 7 and should indicate what categories of persons qualified as particularly at risk.

55. The reference in paragraph 14 to "competent authorities", should be avoided; such authorities were often themselves responsible for the maltreatment. The second sentence should accordingly stress the duty of the State to ensure that complaints were promptly, fully and impartially investigated.

56. Mr. MYULLERSON said that he agreed with Mr. Dimitrijevic that the Committee should refrain from referring to its own jurisprudence; he also agreed with Mr. Sadi's view that the scope of the acts prohibited under article 7 should be expanded.

57. Paragraph 6 seemed to contain an element of contradiction in its last sentence, since a person, whether or not he was in detention, could not in any case consent to scientific experimentation which might be detrimental to his health.

58. He supported Mr. Dimitrijevic's contention that paragraph 7 should confine itself to situations involving torture.

59. Finally, he said that he would be in favour of deleting the square brackets in paragraph 15.

60. Mr. ANDO said that the Committee should review the whole question of its general comments, bearing in mind their purpose, which was to assist States parties to the Covenant in preparing their reports.

61. He welcomed the careful drafting of the comment on article 7, but felt that the first part of the text should be more specific in stating what constituted torture and what differentiated it from cruel, inhuman or degrading treatment, perhaps by referring to relevant United Nations Conventions. The text should also stress the importance of education in preventing torture and cruelty, and should clearly distinguish between cases in which acts prohibited by article 7 were committed by the State or by public authorities and those for which a private individual was responsible.

62. Turning specifically to paragraph 5, he said that, while the wording seemed to be largely satisfactory, it might be useful to amend the reference to corporal punishment.

(Mr. Ando)

63. he agreed with Mr. Dimitrijevic that the existing wording of paragraph 7 was too peremptory, and with Mr. Wennergren's suggestion regarding paragraph 12.

64. Mr. HERNDL supported the amendment to the English text of paragraph 5 proposed by Mrs. Higgins. In paragraph 6 the reference to principle 22 of the Body of Principles should be sufficient, and the words "a detained person ... by virtue of his very detention" could therefore be regarded as superfluous.

65. In paragraph 7 and 8, the word "must" should be replaced by "should", and the former paragraph should clearly state that the violations concerned were related to torture. It should also make specific mention of the principle of non-refoulement.

66. The wording of paragraph 9 should stress the need to foster greater awareness in society at large of the issues covered by article 7. Such awareness should not be confined to law enforcement personnel and other officials.

67. In paragraph 10, he noted that the wording failed to explain who was "particularly at risk". The second sentence of the paragraph should be amended to begin "All related practical steps should be taken, such as keeping interrogation rules ...".

68. He was unhappy with the wording "places officially recognized as such" in paragraph 11, and noted that the original French text referred to "les lieux de détention officiellement reconnus". He suggested that the English text be brought into line with the French.

69. He agreed with Mr. Mavrommatis that, in paragraph 14, it was inappropriate to refer to the "competent authorities", and proposed that the wording of the second sentence should be amended to read "Complaints must be impartially investigated, where necessary, by an independent authority."

70. Finally, he suggested that the first sentence of paragraph 15 should be rephrased since it appeared to be tautological, in that persons not responsible for the prohibited acts would obviously not have been found guilty.

71. Mr. LALLAH said that the new version of the general comment was a notable improvement on the earlier one, but that it woulde require further discussion.

72. The CHAIRMAN said that the draft general comment on article 7 of the Covenant seemed to enjoy a large measure of acceptance, and that it could probably be adopted, with some amendments, at the next session.

The meeting rose at 6 p.m.